

REFERENCE TITLE: liquor; restaurant licenses; continued operation

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## **HB 2643**

Introduced by  
Representative Crandall

AN ACT

AMENDING SECTION 4-213, ARIZONA REVISED STATUTES; RELATING TO LIQUOR LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 4-213, Arizona Revised Statutes, is amended to  
3 read:

4 **4-213. Restaurant audit**

5 A. The director may require a restaurant to submit an audit of its  
6 records to demonstrate compliance with section 4-205.02. The director shall  
7 not require an establishment to submit to such an audit more than once a year  
8 after the initial twelve months of operation even if the establishment is  
9 allowed to continue operating as a restaurant pursuant to subsection E of  
10 this section.

11 B. Except as provided in subsection D of this section, the department  
12 shall audit accounts, records and operations of a licensee that cover a  
13 twelve month period. When conducting an audit, the department shall use  
14 generally accepted auditing standards. An establishment that averages at  
15 least forty per cent of its gross revenue from the sale of food during the  
16 twelve month audit period shall be deemed to comply with the gross revenue  
17 requirements of section 4-205.02. The twelve month audit period shall fall  
18 within the sixteen months immediately preceding the beginning of the audit.

19 C. If the audit or a consent agreement that may be offered at the  
20 discretion of the director and that is signed by the licensee and the  
21 director reveals that the licensee did not meet the definition of a  
22 restaurant as prescribed in section 4-205.02 and the percentage of food sales  
23 determined by the audit or consent agreement was:

24 1. Less than thirty per cent, notwithstanding section 4-209,  
25 subsection A, the director shall deem the license to have been surrendered or  
26 may revoke the license as provided in section 4-205.02, subsection D.

27 2. At least thirty per cent but less than thirty-seven per cent, the  
28 department shall allow the licensee a six month period to continue to operate  
29 under the restaurant license, during which the licensee shall either:

30 (a) Replace the license with a bar or beer and wine bar license,  
31 except that, at the end of that six month period, the department shall revoke  
32 the restaurant license or the licensee shall surrender the restaurant  
33 license.

34 (b) Obtain permission from the department to continue operating with a  
35 restaurant license pursuant to subsection E of this section.

36 3. At least thirty-seven per cent but less than forty per cent, the  
37 licensee shall be granted a period of one year to continue to operate under  
38 the restaurant license, during which the licensee shall attempt to increase  
39 the food percentage to at least forty per cent. If the licensee does not  
40 increase the percentage of food sales to at least forty per cent, the  
41 department shall allow the licensee a six month period to continue to operate  
42 under the restaurant license, during which the licensee shall either:

1       (a) Replace the license with a bar or beer and wine bar license,  
2 except that, at the end of the six month period, the department shall revoke  
3 the restaurant license or the licensee shall surrender the restaurant  
4 license.

5       (b) Obtain permission from the department to continue operating with a  
6 restaurant license pursuant to subsection E of this section.

7       D. The department may conduct an audit of a licensee described in  
8 section 4-209, subsection B, paragraph 12 after twelve months following the  
9 beginning of operations as a restaurant by the licensee to determine  
10 compliance by the licensee with section 4-205.02, except that the department  
11 may conduct an audit of a licensee within the first twelve months of  
12 operation if the licensee has made a substantial modification in the  
13 restaurant equipment, service or entertainment items or seating capacity  
14 during that twelve month period, in which event the department may conduct  
15 the audit for a period of less than twelve months.

16       E. A restaurant licensee may continue to operate with its restaurant  
17 license if its food sales are at least thirty per cent and less than forty  
18 per cent and the department approves the continuation of the restaurant  
19 license pursuant to this subsection and subsections C, F, G, H and I of this  
20 section. The department shall not approve more than fifteen restaurant  
21 licenses pursuant to this subsection and subsections C, F, G, H and I of this  
22 section in ~~each of the fiscal years 2006-2007 and 2007-2008 ANY FISCAL YEAR.~~  
~~The department shall not approve any additional licenses pursuant to this~~  
~~subsection and subsections C, F, G, H and I of this section from consent~~  
~~agreements entered into or audits conducted in any fiscal year after~~  
~~2007-2008.~~ The department may approve a request submitted by the licensee to  
27 continue to operate with its restaurant license only if all of the following  
28 apply at the time the licensee files its request with the department:

29       1. The restaurant has a sufficient number of cooks, food preparation  
30 personnel and wait staff to prepare and provide the restaurant services that  
31 are necessary for the menu offered by the licensee.

32       2. The restaurant's equipment is of a sufficient grade and the size of  
33 the restaurant's kitchen is appropriate to the menu offered and the kitchen  
34 occupies not less than twenty per cent of the total floor space of the  
35 licensed premises.

36       3. The menu is of a type consistent with a restaurant operation. In  
37 making a determination pursuant to this paragraph, the department may  
38 consider the proportion of food sales to alcohol sales, the price of  
39 spirituous liquor beverages and food served by the licensee and whether the  
40 licensee provides reduced price or complimentary food and beverages.

41       4. Not more than thirty per cent of the public interior area floor  
42 space consists of pool tables, dart or arcade games, barstools, cocktail  
43 tables and similar types of seating and dance floors, and the aggregate area  
44 of all dance floors on the premises is not greater than ten per cent of the  
45 total floor space of the public area of the premises.

1       5. The name of the restaurant does not include terms associated with  
2 alcohol consumption, such as "bar", "tavern", "pub", "spirits", "club",  
3 "lounge", "cabaret", "cantina" or "saloon".

4       6. Disposable dinnerware and smallware, including dining utensils, are  
5 not used except in outdoor areas.

6       F. If the department intends to approve a restaurant's continuation of  
7 operation pursuant to subsection E of this section:

8       1. The department shall advise the governing body of the city or town  
9 if the premises are within the incorporated limits of a city or town or the  
10 county of the department's intent.

11      2. The city or town or the county shall post a notice for at least  
12 twenty days on the licensed premises that the licensee has made a request for  
13 continuation to operate with a restaurant license and invite bona fide  
14 residents who own, lease or reside on property within a one mile radius of  
15 the licensed premises to file written comments with the department regarding  
16 the request within thirty days of the first posting of the notice.

17      G. If the local jurisdiction through its governing body or its  
18 authorized agent does not object within ninety days, the licensee may  
19 continue its operation as a restaurant.

20      H. If the department intends to disapprove a restaurant's continuation  
21 of operation pursuant to subsection E of this section, or if the local  
22 jurisdiction or its agent timely objects to its continuation, the department  
23 shall set a hearing before the board and the local jurisdiction shall post a  
24 notice of the hearing for a period of at least twenty days on the licensed  
25 premises. The city or town or the county may testify at the hearing and bona  
26 fide residents who own, lease or reside on property within a one mile radius  
27 of the licensed premises may testify before the board regarding the  
28 licensee's request. The board shall determine whether the restaurant may  
29 continue its operation based on consideration of the criteria listed in  
30 subsection E of this section.

31      I. A restaurant licensee may continue to operate with its restaurant  
32 license pursuant to subsection E of this section, if the restaurant and the  
33 restaurant licensee continue to meet the requirements of this subsection,  
34 subsection E of this section and any other statute. As a condition of  
35 continuing operation as a restaurant under subsection E of this section, the  
36 department may require the licensee to specifically acknowledge the  
37 representations made by the licensee regarding its operations in support of  
38 the licensee's continuing operation as a restaurant. Notwithstanding  
39 subsection A of this section, if the licensee changes its operation in any  
40 way that materially and detrimentally affects the representations made by the  
41 licensee, the department may audit the licensee or terminate the license  
42 without an audit.